

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARK BEASLEY,
Plaintiff,
v.

LUCKY STORES, INC., et al.,
Defendants.

Case No. [18-cv-07144-MMC](#)

**ORDER DENYING AS MOOT
DEFENDANTS' MOTION TO DISMISS
AND DEFENDANT NESTLE USA,
INC.'S MOTION TO STRIKE**

Before the Court are two motions, both filed November 30, 2018: (1) the "Motion to Dismiss Plaintiff's Complaint," whereby all defendants¹ seek dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure; and (2) the "Motion to Strike Portions of the Complaint," whereby defendant Nestle seeks to strike several allegations from plaintiff's initial complaint pursuant to Rule 12(f) of the Federal Rules of Civil Procedure. On December 19, 2018, plaintiff filed a First Amended Class Action Complaint ("FAC").

A party may amend a pleading "once as a matter of course within . . . 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." See Fed. R. Civ. P. 15(a)(1). "[A]n amended pleading supersedes the original, the latter being treated thereafter as non-existent." Bullen v. De Bretteville, 239 F.2d 824, 833 (9th Cir. 1956), cert. denied, 353 U.S. 947 (1957).

In the instant case, plaintiff filed his FAC within 21 days after service of both motions, and, consequently, was entitled to amend as of right. See Fed. R. Civ. P.

¹ The defendants are Lucky Stores, Inc., Nestle USA, Inc. ("Nestle"), Save Mart Super Markets, the Kroger Company, and the Save Mart Companies, Inc.


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15(a)(1).

Accordingly, the motion to dismiss and motion to strike are hereby DENIED as moot.

IT IS SO ORDERED.

Dated: December 21, 2018


MAXINE M. CHESNEY
United States District Judge